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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/624,389

07/22/2003

Mark C. Estes

PF01022 US

6826

23608 7590 03/07/2007
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EXAMINER

DESANTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/624,389	Applicant(s) ESTES ET AL.	
	Examiner Matthew F. DeSanto	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
 - 4a) Of the above claim(s) 35-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34, 75-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in the reply filed on 12/05/06 is acknowledged.
2. Claims 35-74 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II & III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/05/06.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-34, 75-94 are rejected under 35 U.S.C. 102(e) as being anticipated by Campbell et al. (USPub 2003/0060765).

Campbell et al. discloses an infusion system for infusing a fluid into a body of a user, the infusion system comprising: a characteristic determining device including: a determining device housing adapted to be carried by the user; a receptacle coupled to the determining device housing for receiving and testing an analyte from the user to determine a concentration of the analyte in the user; a

determining device processor contained in the determining device housing and coupled to the receptacle for processing the determined concentration of the analyte from the receptacle; and a determining device communication system contained in the determining device housing and coupled to the determining device processor for transmitting a communication including data indicative of the determined concentration of the analyte in the user; and an infusion device including: an infusion device housing adapted to be carried by the user; a drive mechanism contained in the infusion device housing and operatively coupled with a reservoir containing the fluid for infusing the fluid into the body of the user; an infusion device communication system contained in the infusion device housing for receiving the communication including the data indicative of the determined concentration of the analyte in the user from the determining device communication system; an infusion device processor contained in the infusion device housing and coupled to the infusion device communication system for processing the data indicative of the determined concentration of the analyte in the user and controlling the infusion device; a bolus estimator used in conjunction with the infusion device processor for calculating an estimated amount of fluid to be infused into the body of the user based upon the received data indicative of the determined concentration of the analyte in the user-and a target concentration of the analyte in the user; and an infusion device indicator to indicate when the estimated amount of fluid to be infused has been calculated (Figures 1, 7, 8, 19 and paragraph [0010], [0090]).

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5. Claims 1-34, 75-94 are rejected under 35 U.S.C. 102(e) as being anticipated by Estes et al. (US Pub 2003/0114836).

Estes et al. discloses an infusion system for infusing a fluid into a body of a user, the infusion system comprising: a characteristic determining device including: a determining device housing adapted to be carried by the user; a receptacle coupled to the determining device housing for receiving and testing an analyte from the user to determine a concentration of the analyte in the user; a determining device processor contained in the determining device housing and coupled to the receptacle for processing the determined concentration of the analyte from the receptacle; and a determining device communication system contained in the determining device housing and coupled to the determining device processor for transmitting a communication including data indicative of the determined concentration of the analyte in the user; and an infusion device including: an infusion device housing adapted to be carried by the user; a drive mechanism contained in the infusion device housing and operatively coupled with a reservoir containing the fluid for infusing the fluid into the body of the user; an infusion device communication system contained in the infusion device housing for receiving the communication including the data indicative of the determined concentration of the analyte in the user from the determining device communication system; an infusion device processor contained in the infusion device housing and coupled to the infusion device communication system for processing the data indicative of the determined concentration of the analyte in the user and controlling the infusion device; a bolus estimator used in conjunction with the infusion device processor for

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calculating an estimated amount of fluid to be infused into the body of the user based upon the received data indicative of the determined concentration of the analyte in the user-and a target concentration of the analyte in the user; and an infusion device indicator to indicate when the estimated amount of fluid to be infused has been calculated (Figures 1, 4, and entire reference).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew DeSanto
Art Unit 3763
March 5, 2007